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A Bad Law In Need of Repeal

The History & Economics of Davis-Bacon

The 1931 Davis-Bacon Act needlessly inflates the cost of federal and federally-supported construction projects in four ways: (1) It uses a flawed wage-fixing formula that usually sets the highest industry wages in an area as the minimum wages for federally-financed projects; (2) it mandates archaic work rules and craft distinctions that result in misclassifications of work and misallocations of labor; (3) it prevents taxpayers from benefitting from competitive bidding by shutting most small, non-urban, and minority-owned employers out of the competition for federal contracts; and (4) it creates a crushing paperwork burden for small businesses. As a result, taxpayers pay a "Davis-Bacon surcharge" of as much as 38 percent on public works projects. Davis-Bacon has now entered its eighth decade – one in which the non-partisan Congressional Budget Office (CBO) projects the law will cost taxpayers $10.5 billion.

Even worse, Davis-Bacon discriminates against young and minority workers in the construction industry. Worse still, that was its intent.

History

The "Growing Menace" of Black Employment

In the first half of the 20th century, southern black migrants were able to compete with exclusive white northern unions by offering to do the same jobs for less, evoking economic and racial animosity toward black labor. In one infamous episode, a 1917 union-led demonstration in East St. Louis to protest the "growing menace" of "[t]he immigration of the Southern Negro into our city" erupted in violence that left 39 blacks dead. While W.E.B. DuBois blamed "[Samuel] Gompers and his Trade Unions," American Federation of Labor (AFL) President Gompers blamed local businessmen who had "lur[ed] colored men into that city to supplant white labor."

Representative Robert Bacon was a Long Island Republican who once introduced a statement from 34 professors into the *Congressional Record* calling for limits on immigration from countries "in which the population is not predominantly of the white race." Bacon's complaints about an Alabama

firm that brought in black laborers for a federal construction contract in his district found an audience with Republican Senator and former Labor Secretary James J. Davis of Pennsylvania.

Racial resentment permeated debate over Davis-Bacon. Testifying in favor, AFL President William Green complained, "Colored labor is being brought in to demoralize wages." Representative John Cochran, a Missouri Democrat, commented:

> "I have received numerous complaints in recent months about southern contractors employing low-paid colored mechanics getting work and bringing in employees from the south."

Alabama Democrat Representative Miles C. Allgood described why 1931 was a particularly important moment to block minority laborers from public works jobs:

> "Reference has been made to a contractor from Alabama who went to New York with bootleg labor. That is a fact. That contractor has cheap colored labor that he transports, and he puts them in cabins, and it is labor of that sort that is in competition with white labor throughout the country. This bill has merit, and with the extensive building program now being entered into, it is very important that we enact this measure."

Representative William Upshaw of Georgia responded wryly to Representative Bacon's parochial interest:

> "You will not think that a southern man is more than human if he smiles over the fact of your reaction to that real problem you are confronted with in any community with a superabundance or large aggregation of negro labor."

The racial and economic animosity was palpable. "What would be the result if cheap labor was brought into my city?" Representative Cochran asked. "It would be resented, and trouble would result."

Economics

Davis-Bacon has always overwhelmingly favored large, urban, unionized contractors. Shortly after its enactment, most federal construction became reserved for a small, closed club of large contractors specializing in Davis-Bacon jobs. Therefore, in its early decades, the Act protected racist contractors and "good-ole-boy" union hiring halls that shut out black workers.

What Does Davis-Bacon Require?

Davis-Bacon ostensibly claims to require that the minimum wage to be paid for each type of work on federal construction be the local "prevailing wage" for that job. However, the federally mandated wage is usually much higher. Faced with the need to determine and apply hundreds of thousands of different "prevailing" wage and benefit determinations every year, the "wage surveys" conducted by Labor Department bureaucrats often amount to nothing more than calls or letters to a few large contractors and union hiring halls. The resulting wage rates mandated on the government contracts rarely resemble local market conditions.

Just the public and private administrative costs of Davis-Bacon are staggering. In the past, more than 10 million forms a year have been filed with the Department of Labor as evidence of compliance, costing more than five million hours a year in industry employee time and amounting to more than 5 percent of the Labor Department's total paperwork. Davis-Bacon's requirement to use outdated work rules and craft distinctions ignores the truly prevailing industry practice of employing semi-skilled "helpers" that assist skilled craftsmen across craft lines. So, for example, if a semi-skilled helper moves pipe in the morning and lumber in the afternoon, Davis-Bacon usually requires that he or she be classified and re-classified and paid as a skilled journeyman plumber in the morning and a skilled journeyman carpenter in the afternoon. To avoid the bookkeeping and morale nightmares this causes, many small, independent contractors simply avoid Davis-Bacon projects, while a large firm can simply call its changing needs into a union hiring hall that sends it a plumber in the morning and a carpenter in the afternoon.

"Harming Minority and Young Workers"

Davis-Bacon immediately furthered the racial goals of its supporters and continues to do so 70 years after its enactment. Economists Richard Vedder and Lowell Gallaway [see list of Sources, below] note that after decades of gains for black construction workers [emphasis in original],

> "In the 1930s, employment generally declined in the craft trades in the North, but the rate of decline was *greater for blacks than for whites*, reversing the trend of more employment growth for blacks. . . . In the South . . . the number of blacks in the trades fell *while the number of whites continued to increase significantly*."

The principal beneficiaries of Davis-Bacon were America's overwhelmingly white and typically exclusionary unions. Their windfall came at the expense of disproportionately black non-union workers who were unfairly denied work.

Today, blacks remain under-represented in construction unions, and minority workers work disproportionately for minority-owned contractors who tend to be small, independent, and non-union. Thus, minorities are *de facto* shut out from federal construction projects. What the nonpartisan GAO reported when it called for repeal in 1979 has been true throughout the Act's history:

> "Davis-Bacon wage requirements discourage nonunion contractors from bidding on Federal construction work, thus harming minority and young workers who are more likely to work in the ununionized sector of the construction industry."

Vedder and Gallaway note that the unemployment gap between whites and blacks in the construction trades that began with Davis-Bacon continued to widen through the 1990s. Further comparing the relative representation of blacks in the construction trades and similarly demanding nonconstruction trades, they found:

> "From 1930 to 1990, black participation in the nonconstruction positions grew much faster than in construction, so that by 1990 blacks were far better represented in the occupations not covered by the Act. . . . Under the Davis-Bacon Act . . . employment opportunities have been reduced for blacks."

Vedder and Gallaway conclude, "the dramatic nature of the changing employment patterns suggests that the avowed racist goals of some of the proponents of the legislation have been at least partially achieved."

Repeal of Davis-Bacon could thwart those racist goals. A recent study published by the National Bureau of Economic research suggests repeal would boost the earnings of black construction workers. It finds repeal of similar state prevailing wage laws is associated with "a significant narrowing of the black/nonblack wage differential for construction workers." After repeal, "the construction wage premium earned by black workers rose by approximately four percentage points."

Lost among the statistics is the impact that an opportunity denied can have on individual lives. One construction industry worker recounts how her San Francisco employer was forced to turn away an unskilled young black man whom the contractor couldn't afford to hire at inflated Davis-Bacon wages. Two days later, the young man returned offering to work for less than the law required. "I won't tell the law," the employee quoted the young man as saying. "I mean, I'm a drug dealer, and I just want out of it. I want to make a better life for me and for my mom and for my little sisters and brothers. And I think you guys offer it to me." The employee recounts, "Two days later the young man was shot and died. Maybe we couldn't have prevented that. But maybe we could have" [see below, Bolick].

While current proponents defend Davis-Bacon solely on economic grounds, it should be of little comfort to unemployed or underemployed minorities that they are merely victims of *de facto* rather than *de jure* discrimination.

"Unnecessary . . . Impractical . . . Inflationary"

By thwarting competitive bidding, bilking taxpayers, and impeding the economic progress of small businesses and minorities, Davis-Bacon has gathered an impressive list of non-partisan detractors. When the non-partisan GAO called for repeal in 1979, it testified,

> "Congress should repeal the Davis-Bacon Act because [1] significant changes in economic conditions, and in the economic character of the construction industry since 1931, plus the passage of other wage laws, make the act unnecessary, [2] after nearly 50 years, the Department of Labor has not developed an effective program to issue and maintain current and accurate wage determinations; and it may be impractical to ever do so, [and 3] the act results in unnecessary construction and administrative costs of several hundred million dollars . . . and has an inflationary effect on the areas covered by inaccurate wage rates and the economy as a whole."

In 1995, the GAO reiterated its call for repeal. The Comptroller General of the U.S. told Congress, "The Act promotes higher federal construction costs which may no longer be acceptable in an era of constrained resources."

Likewise, the nonpartisan CBO for years has suggested repeal on the grounds of fiscal responsibility and promoting equal opportunity. Most recently, it has projected Davis-Bacon will cost taxpayers $10.5 billion over the next 10 years. Suggesting an alternative, the CBO writes,

> "Repealing the Davis-Bacon Act would allow the federal government to spend less on construction . . . In addition, it would probably increase the opportunities for employment that federal projects would offer to less skilled workers."

Moreover, the CBO charges Davis-Bacon is partly to blame for the current backlog of federal maintenance projects: "By raising labor costs, [Davis-Bacon] reduces the amount of maintenance that can be accomplished within a given budget."

Not Necessary for Obtaining "Good Work"

Primarily, supporters defend Davis-Bacon by claiming its inflated costs are the only way to ensure quality work. This claim could be true. However, when made by interest groups directly benefitted by these inflated costs, speaking possibly in their own self-interest, the claim should be taken with a grain of salt.

For illumination on this point, it is useful to consult the act's original sponsor. In committee, Representative Bacon was asked about the offending laborers working in his district, "Is the Alabama concern that you have [made] reference to, a good concern?" Tellingly, Bacon replied, "Yes, they do good work; at least I am so informed." Whatever reasons Congress had for enacting Davis-Bacon, guaranteeing quality work was not one of them. In fact, the act's author admitted Davis-Bacon is not necessary to ensure quality craftsmanship.

The economic reality is that American taxpayers are overpaying for most federally-supported construction work and, therefore, getting less than they deserve for their hard-earned dollars. The

historical reality is that Davis-Bacon was enacted with racist intent and continues to discriminate against minorities in the construction industry. Opposition to the Davis-Bacon Act by free-market advocates, fiscal conservatives, minority businesses, and non-partisan congressional watchdogs is justified. For the sake of all taxpayers, but particularly young and minority construction workers, Davis-Bacon should be repealed.

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NB: Underlined text in this RPC paper represents links that are available from this paper on the RPC website (http://rpc.senate.gov).

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